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Montana Power Company also argues that such former dispositions can at most only be dispositive on the issues of "unappropriated water" and "adverse effect to prior appropriators." See MCA 85-2-311. Montana Power Company is correct. Beneficial use and adequacy of the diversion means are "site specific" to each Applicant. However, the instant objections do not appear to embrace these latter issues, nor do they "state facts" tending to show the absence of the same. See MCA 85-2-308(2).

More basically, we do not understand that an objector has any vested interest in such determinations if in fact and law there is no adverse effect to the water rights that are the focus on his claim. See generally, Carlson v. Helena, 39 Mont. 82, 102 P. 39(1909), Holmstrom Land Co. v. Meagher County Newlan Creek Water Dist., 36 St. Rep. 1403, 605 P. 2d 1060(1979), Horse Creek Conservation Dist. v. Lincoln Land Co., 54 Wyo. 320, 92 P. 2d 572(1939), Affolter v. Rough and Ready Irrigating Ditch Co., 60 Colo. 519, 154 P. 738(1916). This application states a purpose within the range of use that are ordinarily to be regarded as beneficial MCA 85-2-102(2), and whatever the measure of appropriation state on the permit, this Permittee may use no more water than is needed at any particular time. See Tucker v. Missoula Light & Water Co., 77 Mont. 91, 250 P. 11(1926) See also Quigley v. McIntosh, 110 Mont. 495, 102 P. 2d 1067(1940). While we appreciate Montana Power Company's invitation to perform as a private attorney general in these proceedings, we think that it is not too much to ask for some colorable claim. Particularly

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is this so when by our own procedures Department personnel inspect each application for devotion to the statutory criteria, and do not file an objection on their own behalf, see MCA 85-2-310(2), and where there are no other persons claiming a hearing as of right. Mistakes may be made, but even if they are not corrected at the certificate stage, MCA 85-2-315, they form no lasting prejudice.

Wherefore, Application for Beneficial Water Use Permit No. 38327-s41F is hereby granted to Forrest E. Hill to appropriate 200 gallons per minute up to 16 acre-feet per year for the irrigation of 8 acres more or less located in the NW1/4 of Section 31, Township 11 South, Range 2 East, all in Madison County. In no event shall the waters provided for herein be diverted prior to May 1 of any given year nor subsequent to September 1 of any given year. The source of supply shall be certain unnamed tributary to the Madison River, the waters thereof to be diverted into at a point in the NW1/4 NE1/4 NW1/4 of Section 31, Township 11 South, Range 2 East, all in Madison County. The priority date for this Permit shall be August 26, 1981, at 2:00 p.m.

This Permit is subject to the following express conditions, limitations, and restrictions.

A. Any rights evidenced herein are subject to all prior and existing rights, and to any final determination of such rights as provided by Montana law. Nothing herein shall be construed to authorize the Permittee to divert water to the detriment of any senior appropriator.

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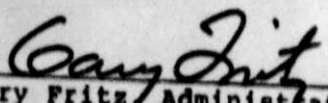
B. The Permittee shall in no event cause to be withdrawn from the source of supply more water than is reasonably required for the purposes provided for herein.

C. Nothing herein shall be construed to affect or otherwise reduce the Permittee's liability for damages which may be caused by the exercise of this Permit.

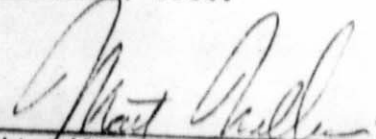
NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedures Act by filing a petition in the appropriate court within thirty (30) days after service of the Final Order.

DONE this 25th day of April, 1984.



Gary Fritz, Administrator
Department of Natural
Resources and Conservation
32 S. Ewing, Helena, MT
(406) 444 - 6605



Matt Williams, Hearing Examiner
Department of Natural Resources
and Conservation
32 S. Ewing, Helena, MT 59620
(406) 444 - 6605

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AFFIDAVIT OF SERVICE
FINAL ORDER

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

Donna K. Elser, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on April 25, 1984, she deposited in the United States mail, Certified mail, an order by the Department on the Application by FORREST E. HILL, Application No. 38327-s41F, for an Application for Beneficial Water Use Permit, addressed to each of the following persons or agencies:

1. Forrest E. Hill, RT. 1, Laurel, MT 59044
2. Bureau of Reclamation, P.O. Box 2553, Billings, MT 59103
3. US Dept. of Interior, P.O. Box 1538, Billings, MT 59103
4. Montana Power Co., 40 East Broadway, Butte, MT 59701
5. K. Paul Stahl, Attorney, 301 First National Bank Bldg., P.O. Box 1715, Helena, MT 59624 *Hand deliver*
6. Scott Compton, Bozeman Field Office (inter-departmental mail)
7. Gary Fritz, Administrator, Water Resources (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION

by Donna Elser

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

On this 25th day of April, 1984, before me, a Notary Public in and for said state, personally appeared Donna Elser, known to me to be the Hearings Recorder of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Jim P. Gibson

Notary Public for the State of Montana
Residing at Helena, Montana
My Commission expires 1/21/1987

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